

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LESLIE R. KELLY,

Plaintiff,

v.

MARTY SAPKO, et al.,

Defendants.

Civil Action No. 03-368 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on November 7, 2003, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 85], filed on February 23, 2007, recommended that Defendants' motion for summary judgment, or in the alternative, motion to dismiss [Doc. No. 77] be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Objections were filed by Plaintiff on March 5, 2007 [Doc. No. 86]. After de novo review of the motion and documents in the case, the Report and Recommendation and the objections thereto, and after consideration of the issues raised in the Oral Argument held on March 9, 2007 and the testimony at a Hearing on the issue of spoliation held before this Court on March 12, 2007, the following order is entered:

AND NOW, this 14th day of March, 2007;

IT IS HEREBY ORDERED that the Defendants' motion to for summary judgment, or in the alternative, motion to dismiss [Doc. No. 77] is GRANTED.

IT IS FURTHER ORDERED that Judgment is entered in favor of the Defendants and against the Plaintiff.

The Report and Recommendation [Doc. No. 85] of Magistrate Judge Baxter, filed on February 23, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge